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In the Supreme Court of the United States

OCTOBER TERM, 1987

SHELL OIL COMPANY, APPELLANT

v.

IOWA DEPARTMENT OF REVENUE

ON APPEAL FROM THE SUPREME COURT OF IOWA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLEE

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QUESTION PRESENTED

Whether, for purposes of determining the amount of income of a multistate corporation that may be apportioned to any one of the States in which it does business, the Outer Continental Shelf Lands Act, 43 U.S.C. 1333(a), which provides, inter alia, that "State taxation laws shall not apply to the outer Continental Shelf," precludes the inclusion of income earned from the sale of oil and gas extracted from the Outer Continental Shelf in the preapportioned income base of the State's apportionment formula.

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INTEREST OF THE UNITED STATES

In response to this Court's invitation, the United States filed a brief as amicus curiae in *Shell Oil Co.* v. *Department of Revenue, State of Florida,* appeal pending, No. 86-1593, which raises the question whether the Outer Continental Shelf Lands Act, 43 U.S.C. 1333(a)(2)(A), limits a State's authority to tax an apportioned fraction of income earned from the sale within the United States of oil extracted from the Outer Continental Shelf. We subsequently filed a brief as amicus curiae at the jurisdictional stage in this case, which raises essentially the same issue.

STATEMENT

1. Appellant Shell Oil Company (Shell) is a Delaware corporation engaged in the unitary business of exploring for, refining and marketing oil and gas products (J.S. App. 7a, 16a-17a). Shell conducts its production activities within various States and on the Outer Continental Shelf (OCS) (*id.* at 20a, 48a). Shell sells all natural gas produced

on the OCS at the platform on OCS lands (*id.* at 7a-8a). In contrast, most of Shell's crude oil is transferred off OCS lands to pipelines for transport to the continental United States, where it is delivered to refineries or other manufacturing facilities (*id.* at 8a, 20a, 25a). Shell's principal business in Iowa during the years at issue consisted of marketing oil and chemical products that had been refined and manufactured outside Iowa (*id.* at 8a, 17a-18a).

The State of Iowa imposes an income tax, administered by appellee Iowa Department of Revenue, on the apportioned share of "net income" that is "reasonably attributable to the trade or business within the state" (J.S. App. 8a, 95a-96a); see Iowa Code Ann. § 422.33(1), (2) and (2)(b)(4) (West Supp. 1988)). Under Iowa law, a corporation's "net income" is its taxable income for federal income tax purposes, as adjusted pursuant to Section 422.35 of the Iowa Code (J.S. App. 96a; see Iowa Code Ann. § 422.35 (West Supp. 1988)). The amount of total net income attributed to business conducted in Iowa is determined under a one-factor formula, which is based on the ratio of sales made in Iowa to gross sales everywhere (see *id.* § 422.33(2)(b)(4); J.S. App. 27a):

$$\frac{\text{Iowa Gross Sales}}{\text{Everywhere Gross Sales}} \times \text{Federal Taxable Income Adjusted Per Iowa Law} = \text{Iowa Income}$$

In computing the portion of its net income attributable to business done within Iowa for the years 1978 through 1980, Shell excluded from the net income subject to apportionment the amount it determined to represent actual or deemed earnings from OCS oil and gas production (J.S. 8; J.S. App. 27a). For oil and gas sold to third parties on the OCS, Shell excluded its gross receipts from those sales, less related costs and expenses. Where the oil was simply

transferred to pipelines for transportation to shore, the amount excluded consisted of the wellhead fair market value of the oil, less related costs and expenses (J.S. App. 21a, 27a; J.S. 2 n.1, 8 n.4). The result was the following adjustment of Iowa's one-factor formula:

$$\frac{\text{Iowa Gross Sales}}{\text{Total Gross Sales less OCS Gross "Sales" actually made and wellhead fair market value of oil transported to shore}} \times \text{Non OCS taxable Income} = \text{Iowa Income}$$

The Iowa Department of Revenue rejected this modification to Iowa's apportionment formula, and issued a notice of assessment computing Shell's Iowa income in accordance with the apportionment formula established by Iowa law (J.S. App. 70a).

2. Shell contested the increase in tax in a hearing before the Iowa Department of Revenue. Shell contended that under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1333(a)(2)(A), it was entitled to exclude OCS revenues from its preapportionment net income base. The hearing officer rejected Shell's contention on the ground that the inclusion in the apportionment formula of income Shell attributed to its OCS activities did not itself entail an application of Iowa's tax law to the OCS in contravention of OCSLA (J.S. App. 72a-74a, 37a).

3. The Iowa District Court for Polk County affirmed the final order of the hearing officer (J.S. App. 15a-35a). The district court held that "[n]othing in the OCSLA or its legislative history can be construed as prohibiting states, either adjacent or inland, from fairly apportioning * * * income derived from sales in the taxing state." Instead, the court concluded (J.S. App. 31a-32a, 33a), "OCSLA was primarily concerned with defining territorial jurisdiction and to quiet title as between adjacent states and the federal government as to submerged lands" and, hence, "OCSLA prohibits extraterritorial taxation of the OCS by both in-

land and adjacent states." Iowa's tax does not run afoul of that prohibition, the court explained (*id.* at 32a-33a), because its "apportionment scheme does not tax income derived by Shell solely from the OCS. Rather, Iowa's indirect taxation of Shell's OCS income is directly attributable to Shell's sales within the State of Iowa."

4. The Iowa Supreme Court affirmed (J.S. App. 1a-14a). The court found (*id.* at 13a (footnote omitted)) that "[t]he inclusion of OCS revenues in gross sales for purposes of applying the statutory apportionment formula * * * apparently aids in obtaining an accurate measure of the tax to be imposed as a result of Shell's Iowa activities." The court concluded (*ibid.*) that it could not "attribute to Congress an intent to impede this legitimate goal in the absence of some compelling indication that such was its intention in passing the OCSLA" and that it could not "divine any such intention from either the legislative history or language of the Act." "Shell's argument fails to indicate how the impact of applying the apportionment formula detracts in any identifiable way from Congressional policy relating to OCS lands" (*ibid.*).[1]

SUMMARY OF ARGUMENT

Shell contends that the Outer Continental Shelf Lands Act (OCSLA) limits state authority to tax income earned

[1] The state supreme court also noted (J.S. App. 10a) that the facts of this case differ from those in *Shell Oil Co.* v. *Department of Revenue*, 496 So.2d 789 (Fla. 1986), appeal pending, No. 86-1593, because the "Florida revenue officials had excluded from their apportionment formula that portion of Shell's gross revenues which were derived from sales made on OCS lands," while "Iowa has apparently included in its gross apportionment formula some revenues derived by Shell from the sale of natural gas at the platform on the OCS" (J.S. App. 10a). The state court concluded, however, that Florida's practice was not compelled by OCSLA.

from activities occurring on the OCS beyond those restrictions imposed on extraterritorial taxation by the Due Process and Commerce Clauses. In particular, Shell argues that OCSLA requires a State to do the very thing that this Court ruled in *Exxon Corp.* v. *Wisconsin Dep't of Revenue*, 447 U.S. 207, 226-229 (1980), that the Due Process and Commerce Clauses do *not* require where the State is applying its apportionment formula to determine the income attributable to the in-state marketing of oil and gas that was produced in another State: exclude from its apportionable tax base the wellhead value of the crude oil and gas.

OCSLA's language, structure, and legislative history show, however, that Congress simply intended to bar any State from subjecting activities on the OCS to taxation as if the OCS were located within the State's borders. A State, therefore, may not impose a severance, production, property, or sales tax on Shell's activities on the OCS. Nor may a State, in determining the amount of Shell's total income that is reasonably attributable to Shell's in-state activities for apportionment purposes, transgress Due Process and Commerce Clause limitations on extraterritorial taxation. OCSLA does not, however, further limit the methods by which a State may utilize its apportionment formula to determine the portion of a unitary business's income that may fairly be attributed to the activities of the business occurring within the taxing State's borders.

Contrary to Shell's claim, the language of OCSLA does not suggest otherwise. First, there is no merit to Shell's submission that Congress's description of the OCS as "an area of exclusive Federal jurisdiction" (43 U.S.C. 1333(a)(1)) evinces congressional intent to preempt the utilization of state apportionment formulas, such as Iowa's, that otherwise comport with the constitutional prohibition on extraterritorial taxation. The same Due Process and Commerce Clause limitations on extraterri-

torial taxation apply whether a unitary business is conducting some of its activities in another State or in an area of exclusive federal jurisdiction (such as the District of Columbia). In both circumstances, a State may consider the business's activities occurring in another jurisdiction in determining the amount of the business's total income that can be fairly attributed to activities occurring within the taxing State's jurisdiction.

Nor is Shell's preemption claim supported by either Section 1333(a)(2), which prohibits the application of "State taxation laws * * * to the OCS," or by Section 1333(a)(3), which disclaims any intention in Section 1333 of conferring on any State "a basis for claiming any interest in or jurisdiction * * * over the [OCS]." Both provisions simply make plain that state taxation laws were not among the laws of States adjacent to the OCS that, pursuant to Section 1333(a)(1), Congress intended to make applicable to that area. Neither provision evinces congressional intent to supplement Due Process and Commerce Clause restrictions on extraterritorial taxation of the OCS.

Finally, the legislative history of OCSLA supports our reading of the statutory language. Whether the laws of the adjacent States, including their power of taxation, should extend to the OCS as they previously had purported to do, was a central focus of congressional concern and debate. Those opposing such state taxation ultimately prevailed and, to that end, added the statutory language upon which Shell relies. Congress, however, never expressed any intent to reduce exposure of private lessees (such as Shell) to state income tax based, as required by the Due Process and Commerce Clauses, on income attributable to their in-state business activities.

ARGUMENT

THE OUTER CONTINENTAL SHELF LANDS ACT DOES NOT REQUIRE IOWA TO EXCLUDE FROM THE PREAPPORTIONED BASE OF ITS APPORTIONMENT FORMULA INCOME DERIVED FROM OIL AND GAS EXTRACTED FROM THE OUTER CONTINENTAL SHELF

Shell's claim that Iowa's apportioned income tax violates the Outer Continental Shelf Lands Act (OCSLA) is somewhat paradoxical. Shell does not contend that Iowa's tax offends the Due Process and Commerce Clauses, which prevent Iowa from taxing income attributable to out-of-state activities. Yet Shell's preemption claim is that Iowa taxes income "attributable to the extraction of the resource on the OCS" (Br. 2 n.1; see *id.* at 16 n.9, 22-24). Shell's complaint is premised on the proposition that Congress established a more stringent ban on extraterritorial taxation than that generally imposed by the Due Process and Commerce Clauses. In particular, Shell claims that OCSLA, unlike the Due Process and Commerce Clauses, dictates that the wellhead value of OCS oil and gas be specifically allocated to the OCS and not included in any State's preapportioned income base.

We believe that the Iowa Supreme Court correctly rejected Shell's preemption claim. Nothing in OCSLA's statutory language, structure, or legislative history suggests Congress concluded that the Due Process and Commerce Clauses would not adequately prevent extraterritorial taxation of activities on the OCS. Specifically, there is no merit to Shell's claim that Congress decided that the apportionment formula method of state income taxation would lead to excessive taxation and, for that reason, decided to require that States "back out" of their preapportioned income tax bases the wellhead value of OCS products, and allocate that amount to the OCS. The decision of the Iowa Supreme Court therefore should be affirmed.

A. Shell Can Maintain Its Claim That Iowa Impermissibly Taxes OCS Income Only If OCSLA Imposes More Stringent Restrictions On Extraterritorial Taxation Than Those Imposed By The Due Process And Commerce Clauses

1. Shell's preemption claim is premised on a misapprehension of the Due Process and Commerce Clause limitations on extraterritorial state taxation. Shell concedes (Br. 12) that Iowa's tax does not violate the Due Process and Commerce Clauses. Shell argues (*id.* at 22-24) instead that Iowa's tax violates OCSLA by taxing "income Shell earned from the extraction of oil and gas from the OCS," which Shell defines (*id.* at 2 n.1) as "the portion of income from the sale of OCS oil and gas that is attributable to the extraction of the resources on the OCS." Shell's specific claim is that Iowa must exclude from its apportionable tax base the wellhead value of OCS oil and gas—"the increment of income that represents the net value at the wellhead (*i.e.*, fair market value less related costs and expenses) of the OCS production" (*ibid.*)—which must instead be allocated, for income tax purposes, exclusively to the OCS itself.

The premise of Shell's preemption claim—that Iowa is taxing income "attributable" to the OCS—cannot readily be squared, however, with its concession that Iowa's tax is consistent with the Due Process and Commerce Clauses. An apportioned state income tax that conforms to the requirements of those Clauses taxes only income "attributable" to in-state activities.[2] Hence, Shell is flatly

[2] "Under both the Due Process and the Commerce Clauses of the Constitution, a State may not, when imposing an income-based tax, 'tax value earned outside its borders.' " *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U.S. 159, 164 (1983) (quoting *ASARCO, Inc.* v. *Idaho State Tax Comm'n*, 458 U.S. 307, 315 (1982)); see P. Hartman, *Federal Limitations on State and Local Taxation* § 2.3, at 20 (1981). "It has long been settled that 'the entire net income of a

wrong in suggesting (Br. 24) that although a State may constitutionally "value in-state transactions under * * * an apportionment theory, there can be no doubt that in doing so the State has taxed" income of Shell that is "attributable" to the OCS. Shell ignores the fact that the very purpose of the function performed by a valid apportionment methodology is to determine the portion of a unitary business's income that is attributable to the business's *in-state* activities, which, as Shell properly concedes,[3] may b

corporation, generated by interstate as well as intrastate activities, may be fairly apportioned among the States for tax purposes by formulas utilizing in-state aspects of interstate affairs' " without offending the Due Process and Commerce Clauses. *Exxon Corp.* v. *Wisconsin Dep't of Revenue*, 447 U.S. 207, 219 (1980) (quoting *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U.S. 450, 460 (1959); see *Underwood Typewriter Co.* v. *Chamberlain*, 254 U.S. 113 (1920). A common way for a State to calculate the amount of a multistate business's income that is fairly attributable to the State is the formula-apportionment method. Under this method, a State begins with company-wide income (from some or all sources) and multiplies that figure by a fraction used to approximate the local share of business. This Court has approved the general use of the common three-factor fraction (receipts, wages, and real and tangible property) (see *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U.S. at 170) and has required taxpayers complaining that unfair apportionment has resulted in the taxation of extraterritorial values, in violation of the Due Process and Commerce Clauses, to show "by 'clear and cogent evidence' that the income *attributed* to the State is in fact 'out of all appropriate proportions to the business transacted * * * in that State.' " *Moorman Mfg.* v. *Bair*, 437 U.S. 267, 274 (1978) (citation omitted; emphasis in original); see *Exxon Corp.* v. *Wisconsin Dep't of Revenue*, 447 U.S. at 220; *Butler Bros.* v. *McColgan*, 315 U.S. 501, 507 (1942); see also *Hans Rees' Sons* v. *North Carolina ex rel. Maxwell*, 283 U.S. 123 (1931) (State may not tax 66-85% of income where only 17% is properly attributed to the State).

[3] See Shell Br. 16 n.9 ("States are free, of course, to tax the portion of a taxpayer's income that is attributable to the subsequent transporting, processing, and marketing of OCS production.").

taxed by a State.[4]

Not surprisingly, Shell lacks any persuasive support for its contrary view that the Due Process and Commerce Clauses allow a state to tax income that is not attributable to in-state activities. The decision of this Court upon which Shell principally relies, *Exxon Corp.* v. *Wisconsin Dep't of Revenue*, 447 U.S. 207 (1980), does not stand for that proposition. Contrary to Shell's intimation (Br. 23), the Court did not indicate in *Exxon Corp.* that a State could, consistent with the Due Process and Commerce Clauses, tax income attributable to the out-of-state exploration and production of oil and gas.

The statement in the Court's opinion upon which Shell relies (Br. 23, citing 447 U.S. at 210), more fully quoted, describes an issue presented in the case: "whether the Due Process Clause permits a State to subject to taxation under its statutory apportionment formula income derived from the extraction of oil and gas located outside the State which is used by the refining department of the taxpayer, or whether the State is required to allocate such income to the situs State." [5] Contrary to Shell's assumption, however, "subject[ing]" income "derived from the extraction

[4] Instead of the three-factor formula commonly used by other States (see note 2, *supra*), Iowa uses a single factor formula, which determines the amount of a unitary business's nationwide income attributable to Iowa by multiplying the business's federal taxable income (with certain adjustments not relevant to this case) by a fraction reflecting the proportion of its total sales that are within Iowa. This Court rejected a Due Process and Commerce Clause challenge to Iowa's apportionment formula in *Moorman Mfg.* v. *Bair, supra.*

[5] In *Exxon Corp.*, the Court rejected the taxpayer's contention "that at least the income derived from exploration and production must be treated as situs income and allocated to the situs State rather than included in the apportionment statute." See 447 U.S. at 225-226 (footnote omitted); pages 12-13 & note 18, *infra.*

of oil and gas located outside the State" to a "statutory apportionment formula" is *not* tantamount to taxing that income.[6] Income that is included in the apportionable tax base is not, by virtue of that inclusion, "taxed" by the State; only the fraction of total income that the apportionment formula determines (by multiplying the tax base by the apportionment fraction) to be attributable to the taxing State's jurisdiction can, consistent with the Due Process and Commerce Clauses, ultimately be taxed by the State.[7]

[6] Shell fails to distinguish between income that is "attributable" for tax purposes to out-of-state activities and income that is "derived" from such activities. The latter may be considered in determining the proportion of total income attributable to in-state activities without offending constitutional barriers to extraterritorial taxation. Cf. *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425, 440 (1980) ("Mobil's business entails numerous 'taxable events' that occur outside Vermont. That fact alone does not prevent the State from including income earned from those events in the preapportionment tax base.").

[7] Shell's misapprehension of the purpose of a valid apportionment formula infects its entire presentation. For instance, Shell wrongly asserts (Br. 14-15; see *id.* at 20-21) that "[b]y arguing that each state is free to tax a proportionate part of Shell's OCS income, Iowa would allow the states collectively to do what it concedes no State can do individually: levy an income tax on the full measure of Shell's OCS production." Shell forgets that because certain activities, such as sales (see Shell's Br. 44), occur on the OCS itself, the sum of all of the States' apportionment fractions should (in theory) be *less* than, and not equal to, "one" (since in each case the denominator of the apportionment fraction will include sales occuring in all 50 states plus the OCS, while the numerator will reflect the sales in each of the states). Hence, contrary to Shell's claim, under Iowa's theory, the States would not "collectively" be "levy[ing] an income tax on the full measure of Shell's OCS production."

Equally unpersuasive is Shell's suggestion (Br. 21) that, under Iowa's view, if "Shell does business and sells its OCS oil only in [Iowa], * * * 100% of Shell's OCS oil income would be apportioned

2. Hence, Shell can prevail in this case only by showing that Congress intended in OCSLA to supplement the restrictions on extraterritorial taxation imposed by the Due Process and Commerce Clauses, requiring those taxes to meet still more stringent restrictions insofar as they touch OCS activities. Indeed, Shell must establish that Congress required in OCSLA that States do the very thing that this Court ruled in *Exxon Corp.* v. *Wisconsin Dep't of Revenue,* 447 U.S. at 226-229, that the Due Process and Commerce Clauses do *not* require where one State is ap-

to—and taxed by—Iowa under its sales-factor apportionment formula." Shell's hypothetical does not necessarily mean that it would be subjected to double taxation. In any event, Shell ignores the fact that this Court has upheld Iowa's single-factor formula under the Due Process and Commerce Clauses—but only as "presumptively valid." See *Moorman Mfg.* v. *Bair*, 437 U.S. at 273. Those Clauses forbid the *application* of Iowa's apportionment formula where it would result in "income attributed to the State '* * * out of appropriate proportions to the business transacted * * * in that State,' [*Hans Rees' Sons*], 283 U.S., at 135, or * * * 'a grossly distorted result,' [*Norfolk & W. Ry.* v. *Missouri State Tax Comm'n*, 390 U.S. 317, 326 (1968)]" (437 U.S. at 274). As this Court recognized in *Moorman Mfg.* v. *Bair, supra*, under Iowa's law, "[i]f the taxpayer believes that application of [Iowa's apportionment] formula subjects it to taxation on a greater portion of its net income than is 'reasonably attributable' to business within the State, it may file a statement of objections and submit an alternative method of apportionment. If the evidence submitted by the taxpayer persuades the Director of Revenue that the statute is 'inapplicable and inequitable' as applied to it, he may recalculate the corporation's taxable income" (437 U.S. at 270; see Iowa Code Ann. § 422.33(3) (West Supp. 1988)). In any event, the focus of Shell's argument is misdirected. The basis for its complaint that Iowa might attribute to itself "100% of Shell's OCS income" is the peculiar nature of Iowa's single-factor sales formula. Hence, the argument does not support Shell's contention that Congress intended in OCSLA to require all States, including those utilizing the more common three-factor formula (see note 2, *supra*), to exclude the wellhead value of OCS oil and gas from their preapportioned income bases.

plying its apportionment formula to determine the income attributable to in-state marketing of oil and gas produced in another State: utilize "separate accounting" to exclude from their apportionable tax bases the wellhead value of the crude oil and gas.[8]

As described below, we do not believe that Congress intended in OCSLA to depart from those constitutional principles in forbidding extraterritorial state taxation of the OCS. We are not persuaded that Congress intended to require that a precise amount of Shell's income (the OCS wellhead value) be excluded from a State's preapportioned

[8] In *Exxon Corp.*, which involved oil production in states other than the taxing state rather than on the OCS, the Court considered, and squarely rejected, a contention identical to Shell's but based on the Due Process and Commerce Clauses. The taxpayer there argued that where, as in this case (see J.A. 13-14, 19, 20), the activities of a unitary business engaged in the exploration, production, and marketing of oil and gas are essentially confined to marketing in the taxing State, "income derived from exploration and production must be treated as situs income and allocated to the situs State rather than included in the apportionment statute" (447 U.S. at 225-226 (footnote omitted)). The Court found (*id.* at 229) that "there is nothing 'talismanic' about the concept of situs for income from exploration and production of crude oil and gas." "The geographic location of such raw materials does not alter the fact that such income is part of the unitary business of the interstate enterprise and is subject to fair apportionment among all States to which there is a sufficient nexus with the interstate activities of the business" (*id.* at 230). This Court, moreover, has repeatedly observed that apportionment formulas are justified by the "basic theoretical weaknesses" of formal geographical or functional accounting. See, *e.g.*, *Container Corp. of America* v. *Franchise Tax Bd.*, 463 U.S. at 181. As this Court has pointed out, separate accounting is subject to "imprecision" and "manipulation" and it "often ignores or captures inadequately the many subtle and largely unquantifiable transfers of value that take place among the components of a single enterprise" (*id.* at 164-165; see *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. at 438).

income base and, in effect, be placed beyond the reach of all state income taxation by being allocated to the OCS for state income tax purposes.[9]

B. The Language Of OCSLA Does Not Bar Iowa From Determining The Portion Of Shell's Income That Is Fairly Attributable To Iowa By Utilizing An Apportionment Formula That Comports With Due Process and Commerce Clause Restrictions On Extraterritorial Taxation.

Shell's claim (Br. 24-28) that the "plain language" of OCSLA preempts Iowa's tax is based on the terms of 43 U.S.C. 1333(a). The three subparagraphs of that provi-

[9] Shell alternatively argues (Br. 44-45) that, at a minimum, OCSLA "bar[s] state taxation of income earned from OCS production that is sold to a third party on the Shelf itself." We perceive no ground for such a distinction in OCSLA. As Shell previously recognized in its Jurisdictional Statement, "[n]othing in the language of the OCSLA or its purposes turns on the location of the ultimate sale of OCS production" (J.S. 23). Of course, whether the Due Process and Commerce Clauses restrict the inclusion of such income in the preapportioned tax base is a different matter. Those Clauses would require exclusion if Shell could prove that " 'the income was earned in the course of activities unrelated to the sale of petroleum products in that State.' " *Exxon Corp.* v. *Wisconsin Dep't of Revenue*, 447 U.S. at 223 (quoting *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. at 439). Shell, however, would have difficulty maintaining that argument for two reasons. First, Shell has already conceded that it is a "unitary business" (see J.A. 13-14, 20). See *Container Corp. of America* v. *Franchise Tax Bd., supra.* In addition, Iowa's apportionment formula should already effectively exclude the income from OCS sales from the income attributable to (and ultimately taxed by) Iowa, because the apportionment fraction's denominator (sales everywhere) exceeds the numerator (sales in Iowa) by at least the amount of sales on the OCS itself. In any event, because Shell relies exclusively on OCSLA and does not claim that the Due Process and Commerce Clauses are themselves offended by Iowa's tax, this case, like *Exxon Corp.* v. *Wisconsin Dep't of Revenue*, 447 U.S. at 225-226 n.10, 227 n.11, does not provide an occasion to reach that distinct constitutional issue.

sion, however, do not even address, let alone support, Shell's cause.[10]

1. Shell principally relies (Br. 24-26) on the language of Section 1333(a)(1), which provides that "[t]he Constitution and laws and civil and political jurisdiction of the United States are extended to the * * * [OCS] * * * to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State" (43 U.S.C. 1333(a)(1)). But, contrary to Shell's claim (Br. 24-25), it does not follow from that statutory language that Congress necessarily intended to preempt Iowa's apportioned net income tax on Shell.

[10] Shell's threshold argument (Br. 17-20) that Congress has the power to limit state taxation and has done so in other federal statutes to promote federal policies, while correct, is unavailing here. The question in this case is what Congress intended to accomplish in OCSLA, not what Congress had the power to do, or what Congress has chosen to do in wholly unrelated statutory contexts. Indeed, the other statutory provisions cited by Shell tend to undermine more than support Shell's argument that Congress intended in OCSLA to supplement the prohibition on extraterritorial taxation imposed by the Due Process and Commerce Clauses. For instance, the language of 31 U.S.C. 3124(a) (emphasis added), cited by Shell (Br. 17-18), contrasts sharply with the language in OCSLA upon which Shell relies. Section 3124(a), which prohibits States from taxing federal obligations or the interest thereon, specifically forbids (with certain exceptions) any form of state taxation "that would require the obligation, the interest on the obligation, or both, *to be considered in computing a tax* * * * " (emphasis added). OCSLA contains no comparable statutory language. Moreover, prior to 1959, when Congress amended Section 3124(a) to include that specific language, this Court had held that the provision's generally-worded bar on state taxation of federal obligations (contained in Rev. Stat. § 3701 (1873-1874 ed.), 31 U.S.C. (1952 ed.) 742) did not prevent states from imposing franchise, estate and inheritance taxes on corporate shares or business franchises, based on the value of the underlying assets, including United States obligations. See generally *American Bank & Trust Co.* v. *Dallas County*, 463 U.S. 855, 858, 863-864 (1983) (citing cases).

To be sure, as Shell states (Br. 25), it is well settled by decisions of this Court that "states cannot impose a tax on private property or persons within an area of exclusive federal jurisdiction, absent the consent of Congress." But those decisions establish only that the activities of a business occurring within an area of exclusive federal jurisdiction, *like* its activities occurring within another State's borders, cannot be taxed by a State as though the activities were occurring within the taxing State's own jurisdiction.[11] None of those decisions supports Shell's far different assertion that the activities of a company occurring within an area of exclusive federal jurisdiction, *unlike*

[11] The cases cited by Shell concerning areas of exclusive federal jurisdiction all involved challenges to state taxes—a state realty tax (*S.R.A., Inc.* v. *Minnesota,* 327 U.S. 558 (1946)), gross sales tax (*James* v. *Dravo Contracting Co.,* 302 U.S. 134 (1937)), and ad valorum tax on private property (*Humble Pipe Line Co.* v. *Waggonner,* 376 U.S. 369 (1964))—that can be imposed only on activities or property occurring or located exclusively within the State's territorial jurisdiction. See, *e.g., S.R.A., Inc.* v. *Minnesota,* 327 U.S. at 562 ("The right of a State to tax realty directly depends primarily upon its territorial jurisdiction over the area."); *James* v. *Dravo Contracting Co.,* 302 U.S. at 138 (quoting Code of West Virginia 1931, ch. 11, Art. 13, amended effective May 27, 1933, Acts of 1933, ch. 33) (footnote omitted; emphasis added) (" 'Upon every person engaging or continuing *within this state* in the business of contracting, the tax shall be equal to two per cent of the gross income of the business.' "); see also *Tyler Pipe Industries, Inc.* v. *Washington State Dep't of Revenue,* No. 85-1963 (June 23, 1987), slip op. 18. None involved an apportioned state income tax. Similarly unpersuasive is Shell's reliance (Br. 25-26) on this Court's decision in *Ramah Navajo School Bd.* v. *Bureau of Revenue,* 458 U.S. 832 (1982). That case involved a state gross receipts tax, the application of which this Court held preempted because the State's provision of benefits to the taxpayer "for its activities *off the reservation*" can not "justify a tax imposed on the construction of school facilities *on tribal lands* pursuant to a contract between the tribal organization and the non-Indian [taxpayer]" (*id.* at 843-844 (emphasis in original)). Here, no tax is being imposed by Iowa on activities occurring on the OCS.

activities occurring within the borders of another State, cannot be considered in determining the amount of the company's total income that can be fairly attributed to activities occurring *within* the taxing State's jurisdiction. Nor does any of those decisions in any way suggest that the safeguards from extraterritorial taxation provided by the Due Process and Commerce Clauses, which allow states to measure in-state value in that manner for apportionment purposes, do not adequately protect the exclusivity of federal jurisdiction.[12]

Indeed, quite the contrary is suggested by this Court's decision in *Polar Co.* v. *Andrews,* 375 U.S. 361 (1964). In that case, the Court rejected the taxpayer's claim that a state law "which imposes a tax in the amount of 15/100 of 1 cent upon each gallon of milk distributed by a Florida distributor" is "invalid" and "beyond the jurisdiction of the State" "[t]o the extent the computation of the tax includes milk which it sells to * * * federal enclaves over which the United States exercises exclusive jurisdiction" (*id.* at 381). The Court distinguished cases (including a case upon which Shell here relies) in which "the tax was deemed to fall upon

[12] For basically the same reason, Shell errs in arguing (Br. 27-28) that its preemption claim is buttressed by "[t]he failure of the OCSLA to incorporate the Buck Act[ ]," which provides that "[n]o person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area * * * " (4 U.S.C. 106(a)). The validity of Iowa's tax apportionment method, which is aimed at measuring in-state values, does not require application of the Buck Act. Because, moreover, the Buck Act allows a state to tax activities occurring in a federal area located within the State's borders as though they were occurring within the State's political jurisdiction, it is understandable why Congress chose not to apply the Buck Act to the OCS; as described at pages 19-20, 22-28, *infra,* Congress specifically decided not to allow states to tax activities on the OCS on that basis.

the facilities of the United States or upon activities conducted within these facilities, the principle of [those] cases being that there was nothing occurring within the State, beyond the borders of the federal enclave, to which the tax could attach" (*id.* at 382). The Florida tax was not similarly infirm, the Court held, because it "is on the privilege of engaging in the business of distributing milk or acting as distributor * * *. The incidence of the tax appears to be upon the activity of processing or bottling milk, in a plant located within Florida, and not upon work performed on a federal enclave or upon the sale and delivery of milk occurring within the boundaries of federal property" (*ibid.*).[13]

Although this case, unlike *Polar Co.* v. *Andrews, supra,* concerns methods of apportionment to avoid subjecting activities within a federal enclave to extraterritorial state income taxation, the Court's reasoning in *Polar Co.* is nonetheless pertinent. By analogy, *Polar Co.* strongly suggests that Iowa's tax is not preempted by the exclusive nature of federal jurisdiction over the OCS so long as the "incidence" of state tax is on in-state activity and "not upon work performed on a federal enclave." The Court's analysis, moreover, leaves little basis for contending that a state tax does not meet that standard where, as here, it comports with Due Process and Commerce Clause requirements, the very purpose of which is to confine a tax to local activities.

2. Section 1333(a)(2)(A), which provides that "State taxation laws shall not apply to the [OCS]," also fails to support Shell's preemption claim. We agree with Shell (Br. 26) that "[i]t is hard to imagine simpler or more sweeping language to prohibit state taxation of the income attributable to the production of oil and gas on the Shelf." But, as

[13] The Court's extended analysis in *Polar Co.* v. *Andrews, supra,* is perhaps especially significant because, as it remarked at the conclusion of its opinion (see 375 U.S. at 383), the Court could have simply relied on the Buck Act to sustain the challenged Florida tax.

we have explained, that language is not enough to sustain Shell's challenge to Iowa's tax apportionment method—which is designed to tax Shell's income-producing activities in Iowa rather than on the OCS. Nothing in that statutory language expresses a congressional intent to expand upon the established Due Process and Commerce Clause restrictions that assure against extraterritorial taxation.

The statutory context of Section 1333(a)(2)'s prohibitory language, moreover, is both contrary to Shell's broad preemption theory and consistent with our view that Iowa's tax is not preempted. Section 1333 generally declares the "[l]aws and regulations governing [OCS] lands." As we have noted, subsection (a)(1) of that Section provides that "[t]he Constitution and laws and civil and political jurisdiction of the United States are extended to the * * * [OCS] * * * to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State." Subsection (a)(2)(A) then "borrows the 'applicable and not inconsistent' laws of the adjacent States as surrogate federal law" in order to "fill the substantial 'gaps' in the [statute's] coverage." *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 480 (1981); *Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U.S. 352, 357 (1969). Section 1333(a)(2)(A) specifically provides that, "[t]o the extent that they are applicable and not inconsistent with * * * Federal laws * * * the civil and criminal laws of each adjacent State * * * are declared to be the law of the United States for that portion of the * * * [OCS] * * * which would be within the area of the State if its boundaries were extended seaward to the outer margin of the [OCS]." It is in this context that subsection (a)(2)(A) adds the final caveat, upon which Shell so heavily relies, that "State taxation laws shall not apply to the [OCS]."

This statutory context suggests that Congress, in adding that final caveat, was addressing only two questions: (1)

whether "[t]he * * * laws * * * of the United States" that subsection (a)(1) "extended to the * * * [OCS] * * * as if [it] were an area of exclusive Federal jurisdiction located within a State," include the Buck Act, 4 U.S.C. 106, which allows a State to tax activities in an area of exclusive federal jurisdiction located within a State as though they were occurring within the State's own territory (see note 12, *supra*); and (2) whether state taxation laws should be included among those state laws borrowed by the federal government from adjacent States for application to the OCS. In unequivocally answering both these questions in the negative, Congress made clear that state taxation laws were not adopted as applicable federal law, and that a State cannot tax activities on the OCS as if those activities were occurring within the State's own jurisdictional borders.

Section 1333(a)(2)(A) thus precludes a State from imposing a property tax on property (such as a drilling platform) located on the OCS or from imposing an excise tax on an event (such as extraction of oil) occurring on the OCS. See *Commonwealth Edison Co.* v. *Montana,* 453 U.S. 609, 617 (1981). The statute, however, imposes no restriction, expressly or by implication, on the States' ability to tax the activities of a unitary business engaged in interstate commerce, beyond the established limitations on extraterritorial taxation imposed by the Due Process and Commerce Clauses. The statute, after all, says only that "State taxation laws shall not apply to the [OCS]"; it does not purport to direct the method by which a State must determine the amount of a unitary business's income that is fairly attributable to its in-state activities.

3. The third provision upon which Shell relies (Br. 26-27), Section 1333(a)(3), likewise fails to support Shell's preemption claim. By its express terms, the provision is wholly inapposite to the issue presented here. It states that "[t]he provisions of this section for adoption of State law as

the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the * * * [OCS]." Hence, the provision does not purport to preempt state laws, but instead simply makes clear that other provisions of the same federal statute "shall never be interpreted" as authorizing otherwise invalid state laws. Like the language in subsection (a)(2)(A), therefore, the language in subsection (a)(3) merely guards against a misreading of other provisions of OCSLA, and has no independent preemptive force.[14]

4. The foregoing analysis of the statutory language on which Shell relies also serves to refute Shell's claim (Br. 43) that our reading of Section 1333(a) deprives its provisions of any meaning. Whether a statutory provision has "meaning" does not depend solely on whether it has independent preemptive force.[15] Indeed, Shell itself admits that there was a more limited purpose of both subsections (a)(2)(A) and (3). Shell acknowledges (Br. 26) that Congress added

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[14] Another provision of OCSLA also comports with our position here. "In order to prevent the lessees from receiving a windfall in being relieved from paying a tax they contemplated paying when they bid in their leases with the States," 43 U.S.C. 1335(a)(9) provides that lessees must "pay[ ] to the Secretary [of the Interior] as an additional royalty on the production from the lease * * * a sum of money equal to the amount of the severance, gross production, or occupation taxes which would have been payable on such production to the State issuing the lease under its laws as they existed on August 7, 1953." S. Rep. 411, 83d Cong., 1st Sess. 3 (1953); see 99 Cong. Rec. 6966 (1953) (remarks of Sen. Cordon). Significantly, Congress did not correspondingly increase royalty payments by an amount intended to approximate apportioned state income taxes that had previously been imposed on activities of lessees occurring within the taxing States' borders.

[15] As this Court has recognized, other provisions for tax immunity in federal statutes are "principally a restatement of the constitutional rule." See *First Nat'l Bank* v. *Bartow County Bd. of Tax Assessors,* 470 U.S. 583, 593 (1985).

the explicit prohibitions on state taxation "because 43 U.S.C. § 1333(a)(2)(A) incorporates certain state laws as surrogate federal law applicable to the OCS" and, hence, "Congress could not rest with the general preemptive implications of exclusive federal jurisdiction."

Ultimately, therefore, Shell's "plain language" argument collapses into a single contention: that the test for determining whether an apportioned state income tax violates limitations on extraterritorial taxation is different where, as in this case, a unitary business is conducting some of its activities in an area that Congress described as an area of exclusive federal jurisdiction. For the reasons we have already given, we disagree and believe that the same Due Process and Commerce Clause limitations on extraterritorial taxation apply as where a unitary business is conducting some of its activities in another State—or, for that matter, in the District of Columbia (which, under Article I of the Constitution, is subject to plenary legislative power of Congress). Because Shell concedes that Iowa's tax does not offend those constitutional limitations, its preemption claim should be rejected.

C. OCSLA's Legislative History Does Not Support Shell's Claim That Congress Intended To Require Iowa To Exclude From Shell's Preapportioned Income Base The Wellhead Value Of OCS Oil And Gas

The legislative history of OCSLA also supports our reading of the statutory language. "Congress enacted OCSLA in the wake of decisions by this Court that the Federal Government enjoyed sovereignty and ownership of the * * * [OCS] to the exclusion of adjacent States" (*Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. at 479 n.7). See *United States* v. *Texas*, 339 U.S. 707 (1950); *United States* v. *Louisiana*, 339 U.S. 699 (1950); *United States* v. *California*, 332 U.S. 19 (1947). Whether the laws of the adjacent

States, including their power of taxation, should extend to the OCS as they had purported to do prior to those decisions, was a central focus of congressional concern and debate. Congress nowhere evinced any intent to reduce exposure of private lessees (such as Shell) to state income tax based, as required by the Due Process and Commerce Clauses, on income attributable to their in-state business activities.

1. Early bills, none of which was enacted, typically provided for extension of the laws of the adjacent States, including their power of taxation, to the OCS. See, *e.g.*, H.R. 4484, 82d Cong., 1st Sess. § 8(a) (1951); 97 Cong. Rec. 9206 (1951); H.R. Rep. 695, 82d Cong., 1st Sess. 7, 13 (1951); Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 Stan. L. Rev. 23, 29 & nn.28, 29 (1953). In the 83d Congress, a bill was introduced that would have permitted a more limited scope for state taxation, allowing the imposition of only severance or production taxes. See H.R. 4198, 83d Cong., 1st Sess. § 8(a) (1953); H.R. Rep. 215, 83d Cong., 1st Sess. 8 (1953). On the House floor, however, that provision was deleted and was replaced by the prohibition on state taxation that Shell relies upon in this case. See 99 Cong. Rec. 2511-2512, 2571, 2575 (1953).

The amended bill passed the House on two occasions. The House first passed the prohibition as part of H.R. 4198 (see 99 Cong. Rec. 2638 (1953)), which concerned both submerged lands (offshore lands within the three-mile limit) and the OCS (offshore lands outside the three-mile limit). After the Senate decided it preferred to address the OCS in a separate bill,[16] the House passed a new bill, H.R. 5134, which was concerned exclusively with the OCS and which

[16] Congress enacted the submerged lands legislation prior to its enactment of OCSLA. See Submerged Lands Act, 43 U.S.C. 1301 *et seq.*

was identical in all relevant respects to the prior bill (H.R. 4198). See H.R. 5134, 83d Cong., 1st Sess. § 9(a) (1953); 99 Cong. Rec. 495 (1953); H.R. Rep. 413, 83d Cong., 1st Sess. 1-2, 4 (1953).

The bill that eventually passed the Senate was S. 1901, and, as with H.R. 4198, the process of its drafting reflects Congress's exclusive concern regarding taxation with the authority of adjacent States to treat, for tax purposes, the OCS as property within their borders. When first introduced, S. 1901 did not envision the application of any state laws to the OCS, providing instead that the OCS should be governed by general principles of federal maritime law. See S. 1901, 83d Cong., 1st Sess. § 4(a) (1953). The bill was then amended in Committee to adopt a new approach, which was the approach ultimately adopted by the Senate as a whole. See 99 Cong. Rec. 7265 (1953). First, the reported bill provided that federal law should extend to the OCS "to the same extent as if [it] were an area of exclusive Federal jurisdiction located within a State." S. Rep. 411, 83d Cong., 1st Sess. 15 (1953) (emphasis omitted)). Second, the reported bill adopted all "applicable and not inconsistent" laws of the adjacent States as the governing federal law "for that portion of the * * * [OCS] which would be within the area of the State if its boundaries were extended seaward" (*ibid.* (emphasis omitted)). Hence, unlike earlier legislative proposals, S. 1901 as reported adopted adjacent state law as federal law, rather than directly extending adjacent state jurisdiction to the OCS. See *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. at 480; *Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U.S. at 355-357; Christopher, *supra,* 6 Stan. L. Rev. at 39-43.

The Senate Committee also added a third provision to S. 1901, which was intended to ensure that the provisions just described would not be read as conferring any jurisdiction on adjacent States to extend their power of taxation to the

OCS. Section 4(a)(3) of the reported bill provided in "precise unequivocal language" that "[t]he provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over * * * the [OCS], or the property and natural resources thereof or the revenues therefrom" (S. Rep. 411, *supra,* at 11, 16 (emphasis omitted)). The accompanying Senate Report explained that "under the terms of S. 1901, as reported, State taxation laws necessarily are excluded from applicability in this area of exclusive Federal jurisdiction not inside the boundaries of any State (*id.* at 3; see also 99 Cong. Rec. 6963-6964 (1953) (remarks of Sen. Cordon)).

The final version, drafted by the Conference Committee, simply added the House bill's express prohibition on state taxation to the federal-law scheme crafted by the Senate. See H.R. Conf. Rep. 1031, 83d Cong., 1st Sess. (1953); 99 Cong. Rec. 10419 (1953). During Senate discussion of the conference substitute, the Senate sponsor of the legislation noted that the House language had been "requested in a super-abundance of caution" and expressed the view that the addition of the House language was "unnecessary" and that "[i]t add[ed] nothing to and took nothing from the bill as it passed the Senate." 99 Cong. Rec. 10471-10472 (1953) (remarks of Sen. Cordon). The legislative history therefore shows that Congress's addition of the House language effected no change in the congressional design, which was confined to eliminating the authority of the adjacent States to treat, for the purpose of asserting their power of taxation, the OCS as property within their borders.

2. The legislative debates further confirm the limited purpose of the statutory language upon which Shell relies. Proponents of state taxation argued that Congress should confer on the adjacent States taxation authority equivalent

to that provided in the Mineral Lands Leasing Act of 1920, § 32, 30 U.S.C. 189, with respect to public lands within a state's borders. See, *e.g.*, 99 Cong. Rec. 2509-2510, 2535 (1953) (remarks of Rep. Wilson); *id.* at 7228 (remarks of Sen. Ellender). They argued that the burdens imposed on adjacent States by OCS activities—particularly the use of public facilities by employees—justified state taxing authority. They accordingly supported amendments that would, in effect, "give coastal States the right to extend their jurisdiction to these [OCS] lands" (*id.* at 7230 (remarks of Sen. Ellender)). See *id.* at 2505 (remarks of Rep. Willis); *id.* at 7228 (remarks of Sen. Ellender); *Outer Continental Shelf: Hearings on S. 1901 Before the Senate Comm. on Interior and Insular Affairs,* 83d Cong., 1st Sess. 277-278 (1953) [hereinafter *Senate Hearings*] (remarks of Sen. Long); *id.* at 185 (testimony of School Lands Board of Texas); *id.* at 189-191 (testimony of John Shepperd, Attorney General of Texas); see also *id.* at 193 (remarks of Sen. Daniel); *id.* at 265-267 (testimony of Fred S. LeBlanc, Attorney General of Louisiana); *Maryland* v. *Louisiana,* 451 U.S. 725, 730 n.5 (1981).

Opponents of state taxation responded that the OCS, being outside the three-mile limit, was not at all analogous to public land within a State's borders. They urged that extension of the power of taxation beyond a State's borders would be "unconstitutional" and constitute "larceny" (see 99 Cong. Rec. 2506 (1953) (remarks of Rep. Celler); *id.* at 2524 (remarks of Rep. Machrowicz); *id.* at 2571-2572 (remarks of Rep. Keating); see also *Senate Hearings* 280 (remarks of Sen. Anderson)), and that it would confer a windfall upon the few adjacent States at the expense of the non-adjacent States. See 99 Cong. Rec. 2523 (1953) (remarks of Rep. Rodino); *id.* at 2524 (remarks of Rep. Machrowicz).

Significantly, no opponent of taxation by the adjacent States ever suggested that a State's use of an apportionment

formula to calculate the portion of a unitary business's income attributable to in-state activities would similarly be "unconstitutional" or "larceny" because a portion of the business's activities took place on the OCS. The opponents instead answered the suggestion of others that the States would be powerless to raise revenues to offset the burdens caused by OCS development by indicating that state authority to tax related activities occurring within the adjacent State's jurisdiction would not be diminished. The sponsor of the legislation in the Senate noted that "[t]he companies holding the leases will have to build and maintain very substantial shore installations within the abutting States, and such shore installations will be subject to local taxes." 99 Cong. Rec. 7254 (1953) (remarks of Sen. Cordon)). During Senate Hearings, Assistant Attorney General Rankin similarly explained that an adjacent State would be able "to tax the shore bases" and that, although the State "would not be collecting [a severance tax], * * * it certainly is getting lots of others" (*Senate Hearings* 661-662).

3. Shell's contrary reading of the legislative history relies (Br. 31-36) principally on an isolated statement by Senator Long expressing his personal belief that, absent amendment of the Senate bill (S. 1901), "employers of these workers are subject neither to the State's severance tax, property tax, nor the tax on corporate profits" (see 99 Cong. Rec. 7261 (1953) (remarks of Sen. Long); S. Rep. 411, *supra,* at 67 (minority report of Sen. Long)).[17] Shell's

[17] The other statements from the legislative history cited by Shell (Br. 28-30) generally condemn the power of state taxation of the OCS, but they do not even arguably touch on the apportionment question presented by this case. Presumably for this reason, Shell is forced to rest its argument ultimately on the odd assertion that "Congress's silence * * * speaks volumes" (*id.* at 33) and on a lengthy discussion of the 1978 amendments to OCSLA (*id.* at 37-41), which neither amended any of the pertinent language of OCSLA nor spoke in any manner to the state taxation issue presented here.

reliance on Senator Long's statement, particularly his reference to a "tax on corporate profits," is unpersuasive for two reasons.

First, the statement does not speak to the apportionment issue presented in this case. Senator Long's remark was expressly premised on the assumption that a private lessee such as Shell would not be engaging in activities within the taxing State's borders. See 99 Cong. Rec. 7261 (1953); S. Rep. 411, *supra,* at 67. Indeed, contrary to Shell's claim (Br. 32), it cannot fairly be assumed that Senator Long's reference to a "tax on corporate profits" referred to an apportioned state income tax. Although, as Shell points out (*id.* at 32 & n.33), the State of Louisiana was then generally utilizing an apportionment formula to calculate the portion of a unitary business's income attributable to in-state activities, Louisiana apparently did not then consider the production of crude oil in Louisiana to be part of a unitary business and, accordingly, assessed an income tax on oil production based on separate accounting (at least where the taxpayer did not also operate an in-state refinery or factory). See *Texas Co.* v. *Cooper,* 236 La. 380, 107 So.2d 676 (1958); see generally J. Hellerstein, *State Taxation: I Corporate Income and Franchise Taxes* ¶ 8.11[2] (1983). Senator Long's reference to the state's corporate profits tax therefore most likely referred to an *un*apportioned income tax measured by separate accounting and, hence, his conclusion that the tax would be barred by OCSLA was based on the fact that the authority of a State to levy such an unapportioned tax depends on the taxable event's occurrence within the State's jurisdiction.[18]

[18] Equally unavailing is Shell's reliance (Br. 35-36) on a remark by Representative Keating in which he expresses the concern "that state taxes on OCS oil and gas would decrease the net value of the leases and thus reduce the amounts lessees would be willing to pay to the government" (*id.* at 35, citing 99 Cong. Rec. 2571 (1953)). That remark, which Representative Keating expressly directed to " '[t]he tax imposed by the adjacent States' " (99 Cong. Rec. 2571 (1953)), merely explains why Congress chose not to allow the adjacent States to extend their territorial jurisdiction to tax to the OCS (*i.e.*, to tax the OCS as if it were within their borders). The remark does not suggest that Congress intended to preempt all state taxes (or other state laws) that might incidentally affect federal revenues. Cf. *Commonwealth Edison Co.* v. *Montana,* 453 U.S. 609, 630-632 (1981).

In any event, any reliance on the "criticisms by * * * Senator[ ] * * * Long" is misplaced because he "opposed the bill that eventually became OCSLA" (*Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. at 483 (footnote omitted)). It is well settled that " '[t]he fears and doubts of the opposition are no authoritative guide to the construction of legislation' " (*ibid.*, quoting *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384, 394 (1951)).

In sum, the legislative history of OCSLA provides no support for, and indeed tends to contradict, Shell's preemption claim. It confirms what the statutory language itself indicates—that Congress simply was not addressing the question of apportionment methods in state taxation of in-state income of a unitary business. There is, accordingly, no basis for Shell's statutory claim.

CONCLUSION

The judgment of the Iowa Supreme Court should be affirmed.

Respectfully submitted.

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